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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. ~~172~~ 353.

THE BARROW STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

MICHAEL KANE.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED APRIL 12, 1897.

(16,557.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 23, 1897.

1 United States Circuit Court of Appeals, Second Circuit.

Present: Wallace, Lacombe, Shipman, circuit judges.

THE BARROW STEAMSHIP COMPANY, Plaintiff in Error,
vs.
MICHAEL KANE, Defendant in Error.

Certification of Questions to the Supreme Court under the Act of March 3, 1891.

This case came before this court on March 5, 1897, upon a writ of error sued out by the defendant below to review a judgment of the U. S. circuit court, southern district of New York, in favor of the plaintiff below, defendant in error. The judgment was entered June 22, 1896, upon a verdict for $7,500 in favor of plaintiff, theretofore rendered. Argument being had upon the writ of error, certain questions of law developed, concerning which this court desires the instruction of the Supreme Court for its proper decision.

2 *Statement of Facts.*

The cause of action is for damages alleged to have been sustained in consequence of an assault upon the plaintiff, a passenger by defendant's steamship, while plaintiff was in transit under contract of transportation, by a person for whose acts it is alleged defendant was responsible. The alleged assault took place in the port of Londonderry, Ireland. The complaint is hereto annexed.

The plaintiff is a citizen and resident of the State of New Jersey. The defendant is a corporation organized and incorporated under the laws of the United Kingdom of Great Britain and Ireland. It is a common carrier operating a line of steamships from ports in that kingdom to the port of New York. It does business in the State of New York through the firm of Henderson Bros., its regularly appointed agents, and has property therein. There is no proof of any written designation by defendant of any one within the State of New York upon whom service of process may be made. Service of the summons was made on a member of the firm of Henderson Bros. as agents for the defendant.

The New York Code of Civil Procedure provides as follows:

"SEC. 432. (Amended 1877, ch. 416.) How personal service made upon a foreign corporation.

Personal service of the summons, upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the State, as follows:

1. To the president, treasurer, or secretary; or, if the cor-
3 poration lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation, and the signature of its president, vice-

president, or other acting head, accompanied with the written consent of the person designated, and filed in the office of the secretary of state. The designation must specify a place, within the State, as the office or residence of the person designated; and, if it is within a city, the street, and street number, if any, or other suitable designation of the particular locality. It remains in force, until the filing in the same office of a written revocation thereof, or of the consent, executed in like manner; but the person designated may, from time to time, change the place specified as his office or residence, to some other place within the State, by a writing, executed by him, and filed in like manner. The secretary of state may require the execution of any instrument, specified in this section, to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this
4 section, can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the State."

"SEC. 1780. When foreign corporation may be sued.

An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the State, or relating to property situated within the State, at the time of the making thereof.

2. Where it is brought to recover real property situated within the State, or a chattel, which is replevied within the State.

3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State."

Within the time allowed defendant filed the following appearance and demurrer:

"United States Circuit Court for the Southern District of New York.

MICHAEL KANE, Plaintiff,
against
BARROW STEAMSHIP COMPANY, LIMITED, Defendant. } In Law.

5 The defendant above named, appearing herein by Henry T. Wing and Harrington Putnam, as its attorneys, specially only for the purposes hereof, as stated in its special appearance

noted herein, demurs to the complaint herein for the special purpose, and no other, until the questions herein raised have been decided, of objecting to the jurisdiction of this court, demurring and excepting to the complaint, because it appears upon the face thereof—

That the court has not jurisdiction of the person of the defendant nor of the subject-matter of the action for the reason that neither the defendant nor the plaintiff is an inhabitant or resident of the southern district of New York, and the action therefore cannot be maintained therein, and that the defendant is a foreign corporation, and the cause of action did not arise within the State of New York.

Wherefore defendant prays judgment whether this court has jurisdiction, and asks that the complaint be dismissed, with costs; but should the court overrule this demurrer and exception, defendant then asks time and leave to answer to the merits, though excepting to the action of the court in overruling said demurrer.

HENRY T. WING,
HARRINGTON PUTNAM,
Attorneys, Appearing Specially for the Defendant as Above Stated."

Argument being duly had upon this demurrer, the circuit court made the following decision:

6 "At a stated term of the United States circuit court for the southern district of New York, held in the United States court-house, in the Federal building, in the city of New York, on the 28th day of May, 1895.

Present: Hon. Hoyt H. Wheeler, judge.

MICHAEL KANE, Plaintiff,
vs.
BARROW STEAMSHIP COMPANY, LIMITED, Defendant.

The demurrer of the defendant herein to the complaint coming on to be heard by this court, after hearing Everett Masten, Esq., of counsel on behalf of defendant, and F. K. Pendleton, Esq., of counsel for the plaintiff, in opposition thereto—

Ordered that the demurrer of the defendant be, and the same is hereby, overruled, with costs to be adjusted by the clerk of this court, with leave to the defendant, within twenty-five days from the service of a copy of this order and a copy of the interlocutory judgment to be entered thereon, on payment of the costs as taxed by the clerk, to answer to the complaint of the plaintiff herein, and that an interlocutory judgment be entered accordingly.

HOYT H. WHEELER, *Judge.*"

Thereafter defendant answered the complaint, and the cause went to trial with the result above indicated.

7 Upon the trial, plaintiff's counsel having opened the case to the jury, counsel for defendant moved to dismiss the suit

upon the ground that it appeared upon the face of the complaint that the court had not jurisdiction thereof; that it had no jurisdiction of the person of the defendant, and that it had no jurisdiction of the subject-matter of the action, and defendant's counsel presented as grounds of said motion the same reasons as were urged as aforesaid upon the trial of the demurrer.

The court denied the motion, and defendant's counsel duly excepted thereto.

At the close of the testimony defendant again moved the court to dismiss the proceedings on the ground of want of jurisdiction both of the subject-matter and of the person of the defendant. The motion was denied and exception reserved.

The assignment of errors contains the following specifications:

"I. In that upon the hearing of the demurrer of the plaintiff in error to the complaint, made upon the ground that it appeared upon the face of the complaint that the court had not jurisdiction in the suit for the reason that the plaintiff was a resident and citizen of the State of New Jersey; that the defendant was a foreign and alien corporation, organized and existing under the laws of the Kingdom of Great Britain and Ireland, and that the cause of action in said Kingdom of Great Britain and Ireland *are* not within the State of New York, the court overruled said demurrer and denied
8 the motion of the plaintiff in error to dismiss the suit thereon."

"II. In that thereafter, upon the opening of the trial before the court and jury, the court denied a motion upon behalf of the plaintiff in error, duly made, to dismiss the complaint upon the ground that it appeared upon the face of the complaint that the court had not jurisdiction of the action, nor the person of the defendant, nor the subject-matter of the suit, for the reasons stated in the first assignments of error."

* * * * * * *

"V. In that the court, at the close of the case, again refused to dismiss a motion, duly made on behalf of the plaintiff in error, to dismiss the suit for want of jurisdiction, for the same reasons as stated in the first and second assignments of error."

Question Certified.

Upon the facts above set forth the question of law concerning which this court desires the instruction of the Supreme Court for its proper decision is:

"Had the circuit court jurisdiction to try the action and render judgment therein against the defendant?"

In accordance with the provisions of section 6 of the act of March 31, 1891, establishing courts of appeal, &c., the foregoing question

of law is by the circuit court of appeals for the second circuit
9 hereby certified to the Supreme Court.

Witness—

WM. J. WALLACE,
Circuit Judge.
E. HENRY LACOMBE,
Circuit Judge.
N. SHIPMAN, *Circuit Judge.*

April 7, 1897.

10 Circuit Court of the United States for the Southern District of New York.

MICHAEL KANE, Plaintiff,
vs.
BARROW STEAMSHIP COMPANY (LIMITED), Defendant.

The above-named plaintiff, by his attorneys, Messrs. Parrish & Pendleton, complains of the above-named defendant and respectfully shows to the court as follows:

I. Plaintiff alleges on information and belief that the above-named defendant is a corporation organized and incorporated under the laws of the Kingdom of Great Britain, and is the owner of a certain steamship known as the "Devonia," and is and was at the time hereinafter mentioned a common carrier of passengers and engaged in the business of transportation of freight and passengers upon said steamship "Devonia" and other steamers, among other places, from Londonderry, Ireland, to the city of New York, and has offices and property in the said city of New York and its general agents therein, managing the affairs of the said company within said city, and is a resident and inhabitant of the city of New York and the southern district of New York within the meaning of the statute in such case made and provided.

11 II. That the said plaintiff is a citizen of the State of New Jersey and resides at Newark, in said State; that the cause of action herein set forth is one arising between a citizen of one of the States of the United States, to wit, the State of New Jersey, and a citizen of a foreign State, to wit, an alien, within the meaning of the statute and laws of the United States, as plaintiff is advised, and involves the sum of over two thousand dollars ($2,000), exclusive of costs, and is a cause of action, as plaintiff is advised, in which, within the meaning of the laws and statutes of the United States in such case made and provided, the circuit court of the United States for the southern district of New York has jurisdiction.

III. Plaintiff further alleges upon information and belief that the said defendant operates its business, or part thereof, in and under the name and as part of the Anchor line, and its said business is in whole or in part done under that name, and its steamers, including the said "Devonia," belong to what is known as the Anchor Line steamships; that the general managers of said business in the city of New York are the firm of Henderson Brothers, who are the

general agents of said defendant, and the officers of said defendant company and said agents are at No. 7 Bowling Green and pier 54, North river, in said city; that on or about the 13th day of September, 1893, the above-named plaintiff purchased and paid for a ticket as a passenger for transportation by defendant from Londonderry, in Ireland, Kingdom of Great Britain, to the city of New
12 York, on the steamship "Devonia," belonging to said defendant, and the said defendant received the said plaintiff as a passenger and undertook and promised to transport the said plaintiff from said Londonderry to New York with due care, and to do all those things necessary and required for the safe transportation of the said plaintiff to and from said points; that it became and was its duty and it became bound to protect and save harmless the said plaintiff from any injury or harm from its agents or servants employed in its business.

IV. That said defendant violated its duty and obligation in that its servants and agents, while engaged in the service of said defendant in the transportation of said plaintiff and other passengers, needlessly and severely and wrongfully and unlawfully assaulted and maltreated said plaintiff and did him great bodily harm during said voyage, whereby he was put to great expense and was greatly and, as plaintiff fears, permanently injured; that said assault and maltreatment occurred as follows:

For the purpose of transporting passengers over part of the voyage, viz., from Londonderry to the steamship "Devonia," lying in the harbor, the said defendant used a certain tender; that said plaintiff, being a passenger on said tender, in pursuance of the obligation and promise aforesaid, the same being part of the transportation to New York, was violently, on or about September 14th, 1893, assaulted and maltreated, without just cause or excuse and wrongfully and unlawfully, by servants or agents of said
13 defendant on said tender; that one of said servants or agents was, as plaintiff is informed and believes, named Hamilton; that, among other things, plaintiff was pushed violently against the side or rail of the boat, thereby striking the lower part of his side and back against said side or rail, and the said plaintiff was in this and other respects greatly injured by the said maltreatment and assault and suffered grievous bodily harm and has had and still has great pain by reason thereof; that, among other things, plaintiff's spine and other internal organs were greatly injured, causing from time to time partial paralysis and weakness of one side of his body and pains in his leg, back, and neck. The plaintiff now is and ever since has been sick, sore, and disabled by reason of said injuries, and will doubtless continue so to be for a long time, and whether plaintiff will ever recover therefrom is doubtful; that the exact extent of said injuries and how soon, if at all, plaintiff will recover therefrom it is at present impossible to state; that plaintiff has been put to great expense by reason of his inability to attend to his business and in endeavoring to cure himself, and has already expended for that purpose a large sum, and will be put to further expense therefor; that in addition to the suffering and cost

to the said plaintiff said plaintiff was thereby injured in his business and has suffered great special damage in regard thereto; that the said plaintiff is engaged in the business of contractor, and since said injury he has been and still is unable to attend to his said business and has been obliged
14 to remain idle, owing to the injuries received and suffered by him through the said unlawful and wrongful acts of the said servants or agents of the said defendant, and has thereby alone already suffered loss and damage to the extent of five thousand dollars ($5,000), and will be unable for a long time to attend to his business, but exactly for how long plaintiff is unable to say, and will thereby be further subjected to loss and damage in that regard; that, as plaintiff believes, said agents and employees, especially said Hamilton, is a person of violent character and not a proper person to be employed in the position given him, as is and then was well known to defendant; that, despite said fact and knowledge, defendant wrongfully employed said agents and still employs them.

V. That plaintiff has suffered damage by reason of the premises to the extent of twenty thousand dollars ($20,000).

Wherefore plaintiff prays judgment against the defendant for damages in the sum of twenty thousand dollars ($20,000), besides the costs of this action, and for such other and further relief as to the court may seem just.

PARRISH & PENDLETON,
Plaintiff's Attorneys; Office and Post-office Address,
44 Broadway, New York City.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

15 Michael Kane, being duly sworn, says that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

MICHAEL KANE.

Sworn to before me this 1st day of November, 1894.
CHARLES E. MANIERRE,
Notary Public, N. Y. Co.

16 UNITED STATES OF AMERICA, }
Second Circuit, } *ss.:*

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled The Barrow Steamship Company, plaintiff in error, against Michael Kane, defendant in error, was duly filed and entered of record in my office by order of said court on the 7th day of April, 1897, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit at the city of New York, in the southern district of the State of New York, this 8th day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

Seal United States Circuit Court of Appeals, Second Circuit.

JAMES C. REED,
Clerk United States Circuit Court of Appeals for the Second Circuit.

17 [Endorsed:] U. S. circuit court of appeals, second circuit. The Barrow Steamship Company *vs.* Michael Kane. Request for instructions. United States circuit court of appeals, second circuit. Filed Apr. 7, 1897. James C. Reed, clerk.

Endorsed on cover: Case No. 16,557. U. S. C. C. of appeals, second circuit. Term No., 778. The Barrow Steamship Company, plaintiff in error, *vs.* Michael Kane. Filed April 12th, 1897.

No. 353.

Brief of Cowen for P. C.

Filed Oct. 18, 1897.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

THE BARROW STEAMSHIP CO.,
Plaintiff in Error,

vs.

MICHAEL KANE,
Defendant in Error.

ON CERTIFICATE FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR SECOND CIRCUIT.

BRIEF FOR PLAINTIFF IN ERROR.

ESEK COWEN,
Of Counsel.

Supreme Court of the United States.

THE BARROW STEAMSHIP COMPANY,
Plaintiff in Error,

vs.

MICHAEL KANE,
Defendant in Error.

This is a question of jurisdiction certified to this Court by the Circuit Court of Appeals for the Second Circuit, and arising out of the following facts:

The plaintiff in error is a foreign corporation organized under the laws of Great Britain, engaged in the business of transporting freight and passengers from certain ports in the Kingdom of Great Britain and Ireland to the port of New York, and the defendant in error is a resident of the State of New Jersey. On or about the 13th of September, 1893, the defendant in error purchased, from an agent of the plaintiff in error in Ireland, a ticket for his own transportation from the port of Londonderry, Ireland, to the port of New York on the steamship *Devonia*, owned by the plaintiff in error. Owing to shallow water the *Devonia* lay at some

distance from the wharves at Londonderry, and defendant in error was taken to the steamer from the Town of Londonderry in a tender or small steamboat. While on the tender, as alleged in the complaint, the defendant in error was wrongfully assaulted by the servants and employees of the plaintiff, and sustained the injuries for which the action is brought.

These facts all appearing upon the face of the complaint, the plaintiff in error filed a special appearance for the purpose only of objecting to the jurisdiction of the Court, and thereupon demurred upon the ground that the defendant in error, being a non-resident of the State of New York, and the plaintiff in error, a corporation created under the laws of a foreign country, and the cause of action not having arisen within the State of New York, a court of the United States sitting in the territory of the State of New York had no jurisdiction of the person of the corporation defendant, or of the subject matter of the action.

The demurrer having been overruled by the Circuit Court, the plaintiff in error was compelled to answer, and the case came on for trial in the Circuit Court. Before the taking of testimony, however, the plaintiff in error moved to dismiss the case on the ground that it appeared on the face of the complaint that the Court had not jurisdiction of the action; and at the close of the whole case, the facts relating to jurisdiction as stated in the complaint having appeared upon the trial, the plaintiff in error renewed the motion. Both motions were denied, and the plaintiff in error duly excepted. The jury found a verdict for the defendant in error, and the plaintiff in error appealed to the Circuit Court of Appeals for the Second Circuit, which has certified the question of jurisdiction to this Court for instructions, the question so certified being:

"Had the Circuit Court jurisdiction to try the action and render judgment therein against the defendant?"

POINTS FOR THE PLAINTIFF IN ERROR.

I.

A foreign corporation cannot be sued at all, either in a State or Federal court, outside of the State or country by which it was chartered, except by its own consent, express or implied. There is no pretense of an express consent in this case. An implied consent, to be sued in accordance with the terms of a State statute declaring fair and reasonable conditions in respect thereto and the service of process, is given by doing business within the State enacting such statute.

1. In the case of Bank of Augusta *v.* Earle (13 Peters, 519), Chief Justice Taney gave first expression, in this Court, to the principle that the right of a corporation to *make contracts* or *bring suit* at all, in a State other than that where created, depended upon the consent of such State, and that such consent would be presumed to have been granted from the comity of nations unless such presumption be rebutted by some law or expression of policy to the contrary; and the Court held that this principle applied as between the several States of the Union.

It also became well settled early in the history of our laws, both in the State and Federal courts, that a foreign corporation could not without its consent *be sued* at all in a personal action outside of the State by which it was chartered.

McQueen *vs.* The Middletown Mfg. Co., 16 Johns., 5.

Peckham *vs.* North Parish in Haverhill, 10 Pick., 274.

Libbey *vs.* Hogden, 9 N. H., 394.

Moulin *vs.* Trenton Ins. Co., 24 N. J. L., 222.

St. Clair *vs.* Cox, 106 U. S., 350.

2. As it was obviously unfair, however, to the residents of a State, that a foreign corporation should be permitted to do business there without being subject to suit as to its business transactions within the State, several of the States, in order to meet this difficulty, passed acts declaring in substance that such corporations should be subject to suit in respect to their business transactions within the State, and brought into court by service of process upon their officers or agents within the State.

The effect of these acts was passed upon by this Court first in the case of Lafayette Ins. Co. *v.* French (18 How., 404). In that case an Indiana insurance corporation was doing business in the State of Ohio, in which there was a statute providing that insurance corporations should be subject to suit upon contracts made in Ohio by service upon the agent who had made the contract, or upon an agent authorized to make similar contracts. The Court said:

> "Now when this corporation sent its agent "into Ohio with authority to make contracts "of insurance there, the corporation must be "taken to *assent to the condition on which* "*alone such business could be there transacted* "*by them*, that condition being that an agent "to make contracts should also be the agent "of the corporation to receive service of pro- "cess in suits on such contracts."

The Court was cautious, however, and carefully limited the decision, the opinion of Chief Justice Taney saying further:

> "We limit our decision to the case of a "corporation acting in a State, foreign to its "creation, under a *law of that State*, which "recognizes its existence for the purpose of "making contracts there and being sued *on* "*them* through notice to its *contracting* "*agents*."

3. Statutes of the same general character were in time passed in nearly all the States; and it is matter of history that they were passed in order to make foreign corporations, doing business in a State, subject to suit there *in respect to such business*, and were absolutely essential to accomplish such purpose, because it had been fully settled by this and other courts that without such an act suit could not be instituted against such a corporation personally *in invitum, either in a State or Federal court.*

In the case of St. Clair *vs.* Cox (106 U. S., 350), the Court, referring to the history of these acts, say:

> "Formerly it was held that a foreign corporation *could not* be sued, in an action for the recovery of a personal demand, outside of the State by which it was chartered. * * * There was no mode of compelling its appearance in the foreign jurisdiction. Legal proceedings there against it were therefore necessarily confined to the disposition of such property belonging to it as could there be found; and to authorize them, legislation was necessary. * * * This doctrine was the cause of much inconvenience and often of manifest injustice. * * * To meet and obviate this inconvenience and injustice, the Legislatures of several States interposed and provided for the service of process on the officers and agents of foreign corporations doing business therein."

This case involved the validity of a personal judgment of a court of the State of Michigan obtained by default against a foreign corporation upon service of an attachment upon an agent of the corporation within the State, pursuant to the State statute; but it did not appear that the corporation was doing business within the State. The Court held that the judgment could not be received as evidence in the Federal courts. Mr. Justice Field, by his full and comprehensive discussion of the case, makes quite clear the grounds upon which service

upon an agent of a foreign corporation, in accordance with these State statutes, is recognized by the Federal courts as giving jurisdiction. He states them, substantially verbatim, as follows:

> That, in respect to the manner in which State Courts can acquire jurisdiction to render a personal judgment against non residents, personal service of citation on the party or his voluntary appearance is, with some exceptions, essential to the jurisdiction; that the exceptions are, in proceedings to determine the status of citizens toward non-residents, and *where a party has agreed to accept a notification to others, or service on them, as citation to himself; that this doctrine applies with all its force to personal judgments of State courts against foreign corporations;* that a corporation of one State may not do business in another without the latter's consent, and such consent may be accompanied with conditions; that such conditions are valid and effectual, *provided* they are not repugnant to the Constitution and laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, *or that principle of natural justice which forbids condemnation without opportunity for defense;* that where a State permits foreign corporations to do business within its borders, and at the same time provides by statute that in suits against them *for business there done*, process shall be served upon their agents, such provision is a condition of the permission, and, inasmuch as a corporation even in its home State can act only through its agents, and serving process on its agents in other States *for matters within the sphere of their agency* is in effect serving process on it as much as if such agents resided in the home State, *therefore* such condition is not in its nature unreasonable and unjust, and corporations, by doing business within the State, are deemed to assent to such condition as fully as though they had specially authorized their agents to receive service of the process; that such condition must not, however, encroach

upon that principle of natural justice which requires notice of a suit to a party before he can be bound by it, *it must be reasonable and the service provided for should be only upon such agents as may be properly deemed representatives of the foreign corporation, i. e.*, those standing in a representative character to the company, whose duties are not limited to those of a subordinate employee or to a particular transaction.

4. There is a uniform series of decisions to the same effect, extending from Lafayette Ins. Co. *v.* French in the 18th of Howard to N. E. Life Ins. Co. *v.* Woodworth in the 111th U. S.

The principle is, perhaps, nowhere more clearly discussed and stated than in the case of United States agst. Am. Bell Telephone Co., 29 F. R., 17, in a very elaborate opinion by the late Mr. Justice Jackson. The Court there say:

"We think the decisions of the Supreme "Court have settled and established the propo- "sition that, *in the absence of a voluntary "appearance*, these conditions must concur or "co-exist in order to give the *Federal courts* "jurisdiction *in personam* over a corporation "created without the territorial limits of the "State in which the Court is held. It must ap- "pear as a matter of fact (1) that the corpora- "tion is carrying on its business in such for- "eign State or district; (2) that the business is "transacted or managed by some agent or "officer appointed by and representing the cor- "poration in said State; and (3) *the existence of "some local law, making such corporation, or "foreign corporations generally, amenable to "suit there, as a condition, express or implied, "of doing business in the State.* When the "local law expressly or by comity permits for- "eign corporations to do business in the State; "when it also provides for suit against them *in "a reasonable and proper manner, and within "the just limits of the State's power and au- "thority;* and when a foreign corporation "thereafter enters the State and transacts its "corporate business by means of resident

"agents coming within the terms of the local "statute, it may be found, and is liable to "suit there, in either the State or Federal "courts, by service of process on such agent."

In that case the question was raised by *plea in abatement to the jurisdiction*, the facts showing lack of jurisdiction not appearing on the face of the bill.

See also the following authorities:

Eaton *v.* St. Louis S. M. and S. Co., 7 F. R., 139.

Lung Chung *v.* Northern Pac. Railway, 19 F. R., 254.

Maxwell *v.* Atchison, &c., R. R., 34 F. R., 286.

Mohr Distilling Co. *v.* Ins. Co., 12 Fed. Rep., 474.

R. R. Co. *v.* Koontz, 104 U. S., 10.

N. E. Mutual Life Ins. Co. *v.* Woodworth, 111 U. S., 146.

In the case of *N. E. Mutual Life Ins. Co.* v. *Woodworth*, above cited, it is said:

"In the courts of the United States it is "held that a corporation of one State doing "business in another is suable in the courts "of the United States established in the lat-"ter State, *if the laws of that State so pro-"vide, and in the manner provided by those "laws.*"

5. Against this uniform and overwhelming weight of authority the industry of the learned counsel for the defendant in error has enabled him to cite two decisions of the Circuit Court, which apparently hold that the aid of the local law is not necessary to give the Federal courts jurisdiction *in personam* over a foreign corporation.

Wilson Packing Co. *v.* Hunter, 8 Biss., 429.

Hayden *v.* Androscoggin Mills, 1 Fed. Rep., 93.

The case of *Wilson Packing Co.* v. *Hunter* is based on a very obvious misunderstanding of *Railroad Co.* v. *Harris* (12 Wallace, 65). Judge Drummond correctly says that the act of Congress making foreign corporations *generally* liable to suit in the District of Columbia was not passed at the time the cause of action in *Railroad Co.* v. *Harris* occurred. From this fact he reaches the conclusion that the action was sustained without any aid from the local law. But a very slight examination will show that this conclusion was wholly erroneous. It is quite true that the action was not brought under the *general* law, making foreign corporations liable in the District of Columbia, but the Court based its decision *upon the special law, permitting the plaintiff in error to extend its road into the District.* The Court, on page 81 of the opinion, recognizes the general rule for which we contend in the most explicit language, and also says on page 84 that *that statute* "made the company liable to suit where this suit was brought."

The case of *Hayden* v. *Androscoggin Mills* above cited is not only partially based on the mistaken opinion in *Wilson Packing Co.* v. *Hunt*, but was expressly overruled in the same district in *Boston Elec. Co.* v. *Elec. Gas Lighting Co.*, 23 F. R., 839, in which Judge Colt says that the decision of Judge Lowell in *Hayden* v. *Androscoggin Mills* "is against the great weight of authority."

6. It is obvious from the foregoing decisions that the claim of defendant in error that these State statutes are not necessary to authorize suit by service on a *general agent within the State*, but are only necessary, and intended, to authorize service on an *inferior* agent, is altogether wrong.

II.

The condition imposed by a State act, to be valid and effectual, must be coextensive only with the permission granted; that is to say, the provisions for service must apply only to causes of action growing out of the business permitted and done within the State; and moreover the agent upon whom service is authorized should be one representing the company in such manner as to raise a reasonable presumption that service upon him will come to the notice of the company.

1. This is clear not only from the express declarations of Mr. Justice Taney in Ins. Co. *v.* French, and Mr. Justice Field in St. Clair *v.* Cox, but upon principle. A natural person being a non-resident cannot be subjected to a suit *in personam* by service on an agent, and a State Act so providing would be ineffectual, because opposed to principles of natural justice, which require notice and an opportunity for defense; but precisely the same principles obtain in the case of a foreign corporation, which is entitled to notice and an opportunity for defense the same as a natural person, and whose rights in that respect a State Legislature may not disregard. A natural person in a foreign State is as much a person and as amenable to suit as at home; but it was held that a corporation ceased to be a corporation, so that it became necessary to obviate in some manner the injustice arising from this fact, and inasmuch as notice to a corporation must in any event be by notice to its agents, no violence is done to principles of natural justice by providing for service upon an agent. But natural justice may not be disregarded in the selection of the agent upon whom service is to be authorized, and he should be one whose relations to

the corporation are such as to render it probable that its officers will receive notice. It is submitted, therefore, that notice to an agent in a foreign country is in no case proper notice except in respect to transactions in such country; that there is not any reasonable presumption that the officers of a corporation will ever receive notice of a suit brought in the courts of some remote country, in respect to matters which did not take place there, merely by service on a local agent who represents the corporation only in respect to local matters, and is without any knowledge, authority, duties or responsibility in respect to the matters in controversy. For this reason, if for no other, jurisdiction in a foreign country should be limited to transactions there.

2. Moreover, even in cases where the State act does not expressly limit the operation of the conditions imposed, to suits growing out of the business done within the State, it is impossible to *imply* any broader *consent* than this on the part of the foreign corporation. The act, as we have seen, was remedial, to obviate the inconvenience and injustice arising from the fact that those having business transactions with the company within the State could not call it to account as to those transactions in the courts of the State; and it cannot be *presumed* that the act intended to impose, or the company to assent to, any condition except in respect to such business.

So long as all the business of the corporation was transacted outside of the State, no reason existed why the State should seek to extend its jurisdiction to its affairs, nor was there any hardship or injustice for the citizens of the State or others within its borders, in the fact that the courts of the State could not adjudicate as to its affairs. Yet by the corporation's transacting some of its business within the State, the situation is not changed *except as to such business*, and no greater reason exists than before, why the courts of the State should now adjudicate

as to the transactions of the company in all the four corners of the earth. It certainly cannot be *presumed* that the State intended to impose any such condition, or the corporation to assent to it.

In the case of New York State, however, it would be merely arbitrary and absurd to hold, because an act provides that as a condition of doing business there a foreign corporation shall submit to suit there when by a *resident* or as to its *business done there*, that, therefore, by availing itself of the permission the corporation *impliedly* consents to be sued by a *non-resident* and as to its *business not done there*.

3. Counsel for defendant in error contends, however, that some how or other, the Federal courts are not bound either by the terms of the State act, or those principles of natural right and justice which they have themselves formulated, and that, therefore, whatever might be the case in a State court, the United States Circuit Court may give notice to some local agent of a foreign corporation, and thereupon proceed to settle the affairs of the company all over the globe.

On the contrary, the United States Circuit Court is, as we have seen, quite as dependent on the State statute as the State courts, and it cannot entertain a suit against a foreign corporation under such an act in any case where a State court could not, and *for the same reasons*.

A Circuit Court of the United States is a local court within the State, appointed to administer within its district, not only the matters over which it is given exclusive cognizance, but also the laws of the State within which it is located. Irrespective of its exclusive jurisdiction, it is a court of the same but no greater jurisdiction than the State courts of general jurisdiction. The Act of March 3, 1887, provides that the Circuit Court shall have cognizance of all *suits* at common law or in equity, in which there shall be a "controversy between citizens of a

State and foreign States, citizens and subjects," and merely creates a court having the same jurisdiction, within the limitation as to citizenship, over such suits as any State court of general jurisdiction in law and equity, and no greater. The act relates solely to jurisdiction of the subject matter and does not undertake to say when the foreign subject or citizen can be brought into court *against his will*. If the statute had the comprehensive effect claimed for it by counsel for defendant in error, then it would not be necessary for a foreign corporation to give any consent, express or implied, to be sued out of the State of its creation; it would not be necessary for a State to impose conditions on such a corporation doing business within its limits; it would not even be necessary for the corporation *to do business* in the State where sued.

The reason why the Federal court is bound by the terms of the State statutes and cannot entertain suit thereunder, except where a State court could, is the same as that which enables it to avail itself of the provisions of the act in order to obtain jurisdiction. It is certain that some legislation imposing the necessary conditions is required in order to raise the implied consent. It is not competent for the Federal Government to dictate to the State upon what terms, if at all, it shall admit foreign corporations. The State Government alone can prescribe that. It may be conceded that the Federal Government can legislate in the case of foreign commerce, but even then it is well settled that legislation such as that in question would, in the absence of federal legislation, be effective and binding and constitute the law on the subject. So that although the Federal courts may enforce the law, they are also bound by it in the same manner as the State courts, *because it is the law for both*.

In the case of *Ex Parte* Schollenberger (96 U. S., 369), where the State act expressly limited jurisdiction to suits brought "in a Court of the Commonwealth," this Court felt obliged in order to

maintain its juridiction to hold that the United States Circuit Court was "a court of the Commonwealth" within the intention of the act.

III.

The plaintiff in error by merely doing business in the State of New York, did not consent to be sued by a non-resident of that State upon a cause of action which arose in Ireland.

1. The Legislation in the State of New York is contained in its Code of Civil Precedure, and is as follows:

Section 1780 of said act, which (omitting the clauses which have no application to this case) provides as follows:

"An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident in one of the following cases only.

"3. Where the cause of action *arose within the State*, except where the object of the action is to affect the title to real property situated without the State."

And Section 432 of the same act, which treats with some detail of the mode of serving process on a foreign corporation in the class of cases *wherein an action can be maintained*. For though not stated in so many words, this is the plain meaning of the section. The two sections are part of the same statute, and the same system of procedure, and must be read together. The New York courts so hold.

Section 1780 must be read as though the words were added, "*and in such actions service of process must be made as provided in Section* 432."

Section 432 must be read, "Personal service of a summons upon a defendant being a foreign corpora-

tion, *in an action authorised by* § 1780, must be made by delivering a copy thereof within the State as follows."

Indeed, it would be absurd in the last degree to solemnly provide for service of process in a class of cases in which the same statute declares that an action shall *never be maintained*.

The State of New York has, therefore, imposed this condition upon a foreign corporation doing business within the State. That it shall consent to be sued upon any cause of action by a resident of the State, and *by a non-resident only where the cause of action arose within the State*. No foreign corporation, by doing business in the State of New York, consents to be brought into either a State or Federal court, upon a suit by a non-resident, upon a cause of action arising in a foreign State or country.

Chapter 5 containing Section 432, provides for the manner of commencing any civil action.

Chapters 6 to 14 inclusive, regulate other matters of practice in such actions.

Whilst Chapter 15 containing Section 1780, prescribes limitations in respect to matrimonial, real estate and certain other actions as to which each State has the right to legislate, and as to which it is usual for it to do so. The provisions of this chapter are not either expressly or by inference limited to State Courts, but are general, and provide the law as to such actions for both the State and Federal Courts.

The Courts of New York State uniformly declare that inasmuch as the Code of Civil Procedure is a single act embodying a homogeneous scheme of legislation, its several sections must be construed together with reference to each other. The same rule applies in the Federal Courts.

In the case of *Maxwell* v. *Atchison*, 34 Fl. R., 286, Mr. Justice Brown says: "It does not appear to me that the law of this State with respect to foreign corporations cuts any figure in the case, since it provides for service of process upon the agent of a

foreign corporation *only when the* cause of action arises within the State" (p. 287).

In the same case the learned Judge quotes with approval Judge Jackson's opinion in United States *v.* Bell Telephone Company, above cited, and adds: "It is evident that this ruling is fatal to the maintenance of this case, as by the State law jurisdiction is given over foreign corporations only where the cause of action arose within this State."

2. Nor is the force of this argument at all weakened by the concession, which is freely made, that the Circuit Court would have had jurisdiction of this action, upon a *voluntary appearance* and submission to suit by the defendant below. It would have had jurisdiction of the subject matter, and jurisdiction of the *person* can always be conferred by *consent*. The State of New York cannot define the *class of controversies* which the Federal courts shall have jurisdiction to try. It *can* define the class of cases in which a foreign corporation, by doing business in the State, shall be deemed to have *consented* to be sued by hostile process, and this definition is a limitation upon the Federal as well as the State courts.

The State has defined such class of cases, and it does not include this action, which is brought by a non-resident of New York, and which arose in a foreign country. It is hardly necessary to argue that a cause of action for an assault committed in Ireland did not arise within the State of New York (Robinson *v.* Oceanic Steamboat Co., 112 N. Y., 321).

3. It is quite probable that the learned counsel for the defendant in error, as well as the learned Circuit Judge, misconceived the effect of the decision of this Court, *in re Hohorst* (150 U. S., 653). That case decides nothing contrary to the position of the plaintiff in error on the present appeal. The Court did not *intend* to make such a decision and the

question was not presented. In the Hohorst case *a resident of the State of New York* had sued an alien corporation doing business in that State. By doing business in the State the corporation had impliedly consented to be sued in any court, State or Federal, within the limits of the State of New York, *as provided by the Legislature of that State*, and the plaintiff being a *resident*, the case came directly within the terms of the New York Code.

The only question in the Hohorst case was whether or not the Act of March 3, 1887, as amended by the Act of August 13, 1885, which forbids the bringing of suits in any other district than that of which the defendant is an *inhabitant*, had any application to *alien* citizens or subjects. This Court held that the true construction of the statute was as though it had read, "where a defendant *is an inhabitant of any judicial district within the United States*, such defendant shall not be sued by original process in any other district."

In other words, this Court held that an alien citizen or corporation *could be sued in exactly the same manner as before the passage of that Act*. It did not pass upon any question involved in this case. And this Court in the Hohorst case, held that the action was sustained under the law of New York, because it cites the Code of that State to show that service was made on the proper agent of the defendant.

From this case the plaintiff's counsel in some inscrutable way deduces the conclusion that the United States Circuit Court would have *no* jurisdiction in Patent, Admiralty or Bankruptcy cases against a foreign corporation if our contention is correct.

But there is no difficulty in dividing those cases into those where the cause of action arose *within* and those where the cause of action arose *without* the State. In one class of cases the United States Courts could gain jurisdiction by service on an agent,

in the other they could not. In the earlier case *In re Louisville Underwriters* (134 U. S., 4 88), it was held that the service was good *under the State* law. The Court said that it would be good in an action at law and that no reason could be suggested which it should be good in admiralty. In that case the question was whether under the Act of 1887, the service was void, because the defendant was not an *inhabitant* of the district of Louisiana. The cause of action arose within the State.

4. The case of *Bank* v. *Mixter* (124 U. S., 721) bears with great force upon the question whether Sect. 432 of the New York Code requires a foreign corporation to consent to be sued in the *Federal* courts, in a class of actions which the same statute declares shall not be brought against it. In *Bank* v. *Mixter* the U. S. Circuit Court had issued an attachment against the property of a national bank before judgment.

Section 915 of the Revised Statutes had contained a general provision that the Circuit Courts of the United States might issue attachments in common law causes against the property of a defendant, "*as provided by the laws of the State in which such court is held for the Courts thereof.*" In 1873, Congress adopted an amendment to the National Banking Law, which is now part of Section 5242 of the Revised Statutes, and reads as follows: "No attachment, injunction, or execution, shall be issued against such [banking] Association, before final judgment in any suit, action, or proceeding, in any State, County, or Muncipal court." The Court below held that though State courts no longer had the power to issue attachments against National Banks, there was nothing to prevent the United States courts from doing so. But this Court said that after the passage by Congress of the amendment of 1873, the State attachment laws must be read as though they contained an express declaration that they did not apply to National Banks.

Now, in the case before the Court, there has existed for many years, not a law of Congress, but a well settled and recognized rule of the Federal courts, that they will entertain suits upon original process against foreign corporations only where the State in which the Federal court is sitting, has conferred a similar power upon the State courts. The New York Legislature passes a law forbidding the issue of process against a foreign corporation, in favor of a non-resident of the State, where the cause of action did not arise within the State. It seems to me that under the case of *Bank* v. *Mixter* this law of the State of New York produced the same effect as to foreign corporations that the Act of Congress of 1873 produced as to National Banks. Having availed themselves of an authority granted by the State the Federal courts lose that right when it is denied by the State. It makes no difference that in one case the right is taken away by a law of Congress, and in the other by a State statute. The point is that the right of the Federal courts depends on the right granted bo the State, and when the latter right is taken away the former falls with it.

IV.

The question of jurisdiction was properly raised by the demurrer of the defendant below, and after the same had been overruled in the Circuit Court, said defendant was not bound to risk the entire case upon the demurrer and suffer judgment to be entered against it. It might, as it did, answer and again raise the question upon the trial.

1. The suggestion, rather than argument, of the defendant in error that the answer amounted to a *general appearance* in the action does not require

much discussion. The defendant below gave notice that it appeared solely for the purpose of raising the question of jurisdiction, and demurred for want of jurisdiction. The effect of a general appearance rests upon the ground of *waiver*, and we submit that after a litigant has taken a jurisdictional objection in the proper way, presented it to the Court and had it formally overruled, he does not *waive* anything by defending the action upon the merits.

South Pacific R. R. *v.* Denton, 146 U. S., 102.

See also U. S. *v.* Telephone Co. (29 F. R., 17), where the same question was raised by plea in abatement.

2. The action was brought in the Southern District of New York. The complaint alleges that the defendant below is a foreign corporation, that the plaintiff below is a resident of New Jersey, and that the cause of action arose in Londonderry, Ireland. Upon its face it shows all the facts which makes it non-suable in the State of New York, *in the absence of an express consent*. No such consent was alleged in the complaint, or proved upon the trial. But the counsel for the defendant in error, if I understand his position correctly, claims that the Court will upon demurrer *presume* that the defendant has *expressly consented* to be sued in the Circuit Court. I submit that no such presumption exists, and that the question raised by the demurrer was not whether the proper means were employed to bring the defendant below into court, but whether it could be sued at all, *without its own consent*, which was not alleged. The plaintiff below practically conceded this by inserting in his complaint allegations that the defendant did business in the State of New York, and had a resident agent. These allegations were intended to show an *implied* consent to be sued. If there was an *express* consent, it was the duty of the plaintiff below to allege it.

3. This case is an action at law, and, therefore, governed by the New York practice.

Subdivision 1 of Section 488 of the New York Code authorized a *demurrer* by the defendant *for want of jurisdiction of his person.*

Now, if the argument of the counsel for the defendant in error is sound, this provision of the Code is nugatory, and this ground of demurrer *never existed.*

For, as *consent* will always give jurisdiction of the *person*, if it is true that the Court will, on demurrer, *presume* a consent of the defendant to be sued in that action, it is clear that no demurrer for want of jurisdiction of the person of the defendant can ever prevail. Of course, the effect of a demurrer for this cause is to raise the objection that the complaint does not show facts authorizing the defendant to be brought into that court *without his consent.*

4. The case of *South Pacific Co.* v. *Denton* is authority for the exact practice pursued in this case. In that case a resident of the Eastern District of Texas brought an action against the defendant in the Western District of that State for a personal injury. The defendant *demurred*, on the ground that it appeared upon the face of the petition that the action should have been brought either in the State of *Kentucky*, where the defendant corporation was organized, or in the *Eastern* District of Texas, where the plaintiff resided. The demurrer was overruled and the defendant answered to the merits, and judgment was recovered against it. It then appealed to this Court, which reversed the judgment, holding that the question was properly raised by *demurrer*, and that the defendant waived nothing by answering to the merits after the demurrer had been overruled, citing *Harkness* v. *Hyde*, 99 N. Y., 476, 479.

The Denton case was a demurrer to the Court's jurisdiction of the person of the defendant, and presented an excellent opportunity for applying the

doctrine of the defendant in error that on a demurrer for that cause, the Court will *presume* the *consent* of the defendant to be sued in that action, for the Court said at page 206 that the exemption from being sued in any other district might be *waived*. According to the counsel for defendant in error the Court ought to have *presumed* a waiver, or an express consent.

V.

The position of the plaintiff in error is as follows:

1. A corporation cannot be sued *in personam* in a State, other than that of its creation, without its own consent, *express* or *implied*.

2. It can give an *implied* consent, by doing business in a State which has declared in what cases such corporation shall be suable, and has prescribed proper and reasonable methods for service of process on such corporation.

3. When express or *implied* consent has been given, it binds the corporation in the Federal as well as the State courts, but the authority of the Federal courts *depends* upon that given by the local statute.

4. The State of New York has conferred no authority upon any court to issue process against a foreign corporation, in an action where the plaintiff is a non-resident and the cause of action did not arise within the State. Neither the State courts nor the Federal courts, therefore, are authorized to issue process in such a case, *under the New York law*, and hence in this case the Circuit Court could not acquire jurisdiction of the person of the defendant.

5. The question was properly presented by demurrer as well as by the motions made on the trial to dismiss the case for want of jurisdiction.

The question certified to this Court by the Circuit Court for the Southern District of New York should be answered in the *negative*.

ESEK COWEN,
Of Counsel for Defendant in Error.

COWEN, WING, PUTNAM & BURLINGHAM,
Attorneys.

No. 353.

Brief of Pendleton for D. E.

FILED
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JAMES H. McKENNEY

Supreme Court of the United States.

Filed Oct. 21, 1897.

BARROW STEAMSHIP COMPANY, LIMITED,
Plaintiff in Error,

against

MICHAEL KANE,
Defendant in Error.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

F. K. PENDLETON,
Of Counsel for Defendant in Error.

Supreme Court of the United States.

BARROW STEAMSHIP COMPANY, Limited,
Plaintiff in Error,

against

MICHAEL KANE,
Defendant in Error.

Brief on behalf of Defendant in Error.

The certified question is, had the Circuit Court, on the facts stated in the certificate, jurisdiction to try the action and render judgment?

The action is a civil action at law of a transitory nature, involving more than $2,000, brought in the Circuit Court for the Southern District of New York by a citizen and resident of New Jersey against an alien corporation doing business in and having general managing agents in New York. These facts were admitted by the demurrer, and are set forth in the certificate.

Being an action of a civil nature at common law, involving more than the required amount between a citizen of the United States and a citizen of a foreign State, it is within the scope of the act of 1887, as amended by act of 1888, granting jurisdiction to the United States Circuit Courts.

As it is *not a suit between citizens of different States*, it does *not* come within the clause requiring that the suit be brought in the district of the residence of either the plaintiff or defendant, and the case *In re Hohorst, 150 U. S. Rep., page 653*, &c., decided that suits against aliens did not come within the provisions of the clause requiring that suit be brought in the district whereof the *defendant is an inhabitant*, on the ground that the "*inhabitant*" clause is only applicable to cases of a defendant inhabitant of *some* district within the United States, and the Court held that

> "such a person or corporation (to wit, alien), may be sued by a citizen of a State of the Union in any district in which *valid service* can be made upon the defendant."

The same rule is reiterated in Galveston, H. & S. A. Ry. *vs.* Gonzales, 141 U. S., 496.

It is conceded that plaintiff in error might have appeared voluntarily and the Court would then have had jurisdiction and that service on a specially authorized agent would be equally efficacious.

St. Clair *vs.* Cox, 106 U. S., 350.

The only possible ground, therefore, upon which want of jurisdiction can be predicated is that there was no valid service of process or an equivalent for such, and that plaintiff in error can now raise that question.

If the plaintiff in error was properly in Court by valid service, or if it failed to raise any question as to service by proper proceedings, so that such question was not before the Court, or if it appeared or in any way waived the question of service by neglecting to raise it at the proper time by appropriate methods, there can be no question as to the Court's jurisdiction.

The plaintiff in error does business in New York, has property there and general managing agents there conducting its business of a common carrier. Plaintiff was injured while a passenger in transit to New York City under a ticket entitling him to passage to that place. Process was served on the general managing agent in that city (there being no designation on file of any person upon whom service should be made as provided for by the New York statute), and was the proper method of service under the provisions of § 432 of the New York statute (see Certificate, pages 1, 2).

Plaintiff in error took no exception to the *method of service or its validity* either by motion to set it or the return aside (which was the proper course if it intended to raise such question) or otherwise, but appeared in the action and demurred on two grounds, viz. :

That it appears upon the face of the complaint that the Court has no jurisdiction for the reason ; *1. That neither party was an inhabitant or resident of New York.*

2. That plaintiff in error was a foreign corporation, and the cause of action did not arise within the State of New York.

The demurrer being overruled, plaintiff in error answered, and at the trial twice moved to dismiss the complaint on the same grounds, to wit :

That the want of jurisdiction appeared upon the face of the complaint.

The position of defendant in error is :

1. That on above facts no question as to the validity of service was before the Court.

2. Plaintiff in error, for all purposes of

giving jurisdiction over it, appeared in the action and waived any question as to regularity of service.

3. The service was valid.

Of these in their order.

I.—If plaintiff in error had desired to question the validity of the service it should have done so by motion to set aside the service or return. On such a motion all the facts could have been shown.

Carstairs *vs.* Insurance Co., 3 Fed. Rep., 833.
In re Hohorst, 150 U. S., 663.

Non constat that on such motion it might have appeared that the agent served was specifically authorized for that purpose, and there can be no doubt that service on an agent specially authorized would be good.

We do not mean in this connection to refer to the filing of a designation under § 432 of the Code mentioned in the certificate; that is a statutory provision. We mean that for ought that appears Henderson Bros. may have been specifically authorized to receive service of process. It is not a question of presumption, one way or the other, as suggested by opposing counsel, but as to the proper method of bringing the question to trial. If the issue was not before the Court there can have been no error.

In re Hohorst, above cited at page 663, illustrates how the facts on such motion could be brought out, and how the question could not be raised or disposed of properly on demurrer.

Instead of making such motion or in any other way by which the facts could appear questioning the service plaintiff in error demurred.

This did not and could not raise the question sought

by plaintiff in error to be raised in this case, viz.: that plaintiff in error had neither by express authority or implied consent authorized service to be made on its general agents in New York, and hence service on them did not bind it.

(*a.*) A demurrer to the complaint admits the facts stated and tenders an issue of law thereon ; it could not raise a question as to the actual or possible service of process. As was well said by Mr. Justice WHEELER in his opinion on the demurrer in this case :

" The question whether plaintiff's pleadings set forth a cause of action between parties over which the Court has jurisdiction may be raised by demurrer, but questions of regularity about bringing the suit cannot well be."

(*b.*) The only objection made by the demurrer in this case is based on the ground that the want of jurisdiction *appears on the face of the complaint.* It is manifest this could not refer to or bring up any question as to a valid service of process for the reason that the facts in regard thereto could not appear in the complaint ; defendant might appear or service be made on an agent specially authorized, or in many different ways.

The manner of service must postdate the complaint and could not form part thereof and could not be an issue at the trial.

The only questions raised or evidently intended to be raised by the demurrer was :

First, that the "inhabitant" clause of the Statutes of 1888 *did apply to alien* defendants, the point decided the other way in the Hohorst case, above cited, and

Second, that Section 1780 of the Code of the State of New York, providing that an action may be maintained in a State Court by a non-resident against a foreign cor-

poration, only where among other cases not material, the cause of action arose within the State, had curtailed the jurisdiction of the United States Court to the same extent, on the theory that the United States Statutes of 1888, vesting jurisdiction in the Circuit Court, *concurrent* with the Courts of the several States, restricted the jurisdiction of such Courts to the cases of which the State Courts had jurisdiction by virtue of the State statutes. See opinion of WHEELER, J., on demurrer, as follows:

> "By Section I of the Act of 1887, as amended by the Act of 1888 (25 Stat., 434), the Circuit Courts of the United States 'have original cognizance concurrent with the Courts of the several States, of all suits of a civil nature at common law or in equity,' 'in which there shall be a controversy between citizens of different States,' 'or a controversy between citizens of a State and foreign States, citizens or subjects,' when the matter in dispute exceeds $2,000. The Courts of the State of New York would not by the law of that State have jurisdiction of the action, for it is by a non-resident against a foreign corporation and arose out of the State (Code, Sec. 1780). As this is a suit of the required amount between a citizen of a State and an alien, the Circuit Courts of the United States would have jurisdiction of it unless the words "*concurrent with the Courts of the several States limit the jurisdiction of the Circuit Courts of the United States in each State to causes of action of which the Courts of the State would, by its laws, have jurisdiction.*" These words have always been used in the judiciary acts of the United States in this connection. The limitation would apply to suits in equity as well as at law. Still the Circuit Courts have always exercised, and been held entitled to exercise equity jurisdiction, in proper

cases, although the courts of the State were by its laws without any such jurisdiction (United States *vs.* Howland, 4 Wheat., 108; Livingston *vs.* Story, 9 Pet. 632; Neves *vs.* Scott, 13 How., 268; Noonan *vs.* Lee, 2 Black, 499). These words seem to have been intended to save to the State Courts their jurisdiction rather than to limit that of the Circuit Court of the United States, which is done only in this respect by the words, 'in which there is a controversy between citizens of different States,' 'or a controversy between citizens of a State and foreign States citizens or subjects.' "

The jurisdiction of the Circuit Courts is given throughout all the States by these latter words, and that of the State Courts is saved to them by the former if the State choose to confer it upon them; but the withholding of any part of it by a State from its Courts cannot have been intended to work a withdrawal *pro tanto* from the Circuit Courts. The question is whether Congress intended to confer just as much jurisdiction in this class of cases upon the Circuit Courts in each State as that State should confer upon its Courts, or full and uniform jurisdiction in all the States, and that full and uniform jurisdiction was and always has been intended seems clear (Cowles *vs.* Mercer County, 7 Wall., 118; Railway Co. *vs.* Whiton, 3 Wall., 270).

It is very evident that after their inability to sustain the points raised by the demurrer was patent counsel for plaintiff in error have endeavored to shift their ground to an objection to the validity of service.

(*c.*) A demurrer for want of jurisdiction over the person raises the question that the person is not subject to the jurisdiction of the Court, such as that he is a foreign

Ambassador, Minister, &c., not that original process has been improperly served.

Nones *vs.* Hope Mut. L. Ins. Co., 5 How. (N. Y.), 96.
Ogdensburgh R. R. Co. *vs.* Vermon R. R. Co., 63 N. Y., 176.

It is very important to bear in mind the distinction between the claim that the plaintiff in error was not *suable* by a non-resident, that is, that the Court could not entertain such an action because § 1780 had indirectly limited the jurisdiction of the United States Court in New York by directly limiting that of the State Court, which was the contention treated of in Judge Wheeler's above opinion, and the contention now urged that plaintiff in error was not *serviceable in invitum* by service on its general agents in New York, because § 432 of the Code was limited by said § 1780. In the first case no general appearance or specific authority could give jurisdiction. The point could be raised by answer or if the non-resident appeared at the trial it could be taken advantage of even then by motion. It is a claim of want of power in the Court.

Gervais vs. *Chicago, R. I. & P.*, 35 State Rep., 129.

In the second it is a question of defect in service, not a want of power in the Court over the cause of action, and would be cured by a general appearance or if the fact should be that the agent was authorized. The former contention would be raised by demurrer, the latter not, nor could the latter be taken at the trial, it not going to the power of the Court over the cause of action.

The learned counsel or plaintiff in error apparently overlooks this distinction in his brief (page 20).

He speaks of the plaintiff being *non suable* without his consent when he means *non serviceable* as though a consent were part of the cause of action and he suggests

that the complaint should have alleged such consent to prevent its being open to demurrer.

It might as well be contended that the complaint should be obliged to allege in a suit against a non-resident that the defendant would appear or could be personally served with process.

This is an entire misconception. We entirely agree, however, with the statement there made that the question raised by the demurrer was not whether proper means were employed to bring the defendant below into Court and that is just why we contend that the question now sought to be raised by plaintiff in error was not before the Circuit Court but was waived by the demurrer on other grounds.

It is true that the New York Code, Subd. 1, § 488, provides for a demurrer for want of jurisdiction of the person but this does not raise questions as to whether defendant is properly brought into Court. It refers as above stated to cases of foreign ambassadors and must be where State Courts have no jurisdictions in suits against them.

In Jones *vs.* The Hope Mutual Life Ins. Co., 5 How. (N. Y.), 96, above cited, the Court says, speaking of demurrers on this ground:

"If it is true that in one sense the Court never gets "jurisdiction over a party unless he is regularly served "with process, that is if irregular it will be set aside. "* * * The meaning of the clause (relating to demur- "rers) that the Court has no jurisdiction of the person is "that the person is not *subject to the jurisdiction* of the "Court, and not that the suit has not been regularly com- "menced, the defendant must relieve himself from such "irregularity by motion."

In Ogdensburgh, &c. R. R. Co. *vs.* The Vermont, &c. R. R. Co., 63 N. Y., 176, above cited, the Court says:

After the defendants appeared and demurred they

could not object that they had not been served with process. By their demurrer they raised the question that upon the facts stated in the complaint the Court had no jurisdiction of their persons, not that they had not been served with process. * * * A defendant can never appear and join an issue of law or of fact without waiving all objections to the regularity or sufficiency of the service of process upon him.

II.—By filing a demurrer, challenging the jurisdiction of the Court on the facts stated in the complaint, the defendant waived service of process and all questions as to any imperfections in or invalidity of the service (see above case).

This as well as filing an answer to the merits constituted an appearance.

A general appearance waives any defect in service.

Fitzgerald Co. *vs.* Fitzgerald, 137 U. S., 106.

Foster's Fed. Pr., page 200, lays down the rule,

"If a party joins with a special appearance and a motion to set aside service of process, a motion to dismiss the suit on another ground, he thereby waives his objection to the irregularity of the service and his proceeding is equivalent to a general appearance."

In St. Louis Co. *vs.* McBride, 141 U. S., 127, the defendant demurred on the ground,

1. That the Court had no jurisdiction of the person of the defendant.

2. No jurisdiction of the subject matter of the action, and

3. That the complaint did not state facts sufficient to constitute a cause of action.

The demurrer was overruled. Defendant contended that the action was not brought in the district of which defendant was an inhabitant.

The Court held that this question had been waived by the demurrer, as it united in it the fact that the complaint did not state facts sufficient to constitute a cause of action, and that this was an appearance and a pleading to the merits, and waived not only all defects in service, but all special privileges of the defendant, such as that he could not be sued in any other district than that whereof he was an inhabitant.

In Hall *vs.* Continental Life Ins. Co., 12 Fed. Rep., 357.

Defendant demurrer for want of jurisdiction acquired by service, and for want of equity.

The Court held that "as the defendant appeared and demurred the parties are before the Court, and the jurisdiction has attached, and there can be no question remaining on the demurrer except as to the equity of the bill."

The demurrer filed by defendant was expressly put on the ground that defendant was not an inhabitant of this district and the suit could not be maintained therein.

This was an assertion of a privilege or right which could not be placed in jeopardy until the Court had obtained jurisdiction by service or appearance. The assertion there of and submission by defendant of the question to the determination of the Court was a waiver or admission of the necessary prerequisite of service of process or appearance.

To ask for the protection of a right at the hands of the Court before raising the objection to the method of being brought into Court and having that question passed upon is a voluntary appearance.

In no one of the cases cited in the brief of plaintiff in error was the question of valid service either actual or potential raised by demurrer.

In St. Clair *vs.* Cox, 106 U. S., 350, and Lafayette Ins. Co. *vs.* French, 18 How., 404, the question was as to the validity in a collateral proceeding of a judgment *in personam* acquired by default on service on an alleged agent.

Maxwell *vs.* Atchison R. R., 34 Fed. Rep., 206; Carstans *vs.* Ins. Co., 13 Fed. Rep., 823; Mohr Distilling Co. *vs.* Ins. Co., 12 Fed. Rep., 474; United States *vs.* American Bell, 29 Fed. Rep., 17; Lung Chang, Admr. *vs.* N. P. R. R., 19 Fed. Rep., 254, were motions to set aside service of process.

In re Schellonberger, 96 U. S., 369, was a *mandamus* proceeding similar to Hohorst case.

In Eton *vs.* St. Louis, &c., 7 Fed. Rep., 139, the question was brought up by motion to dismiss the action on the specific ground that there was no proper service in other words to set aside the service or what is the same thing declare it invalid. It is evident from the case that no answer had been put in.

It may be conceded that if a defendant raises the objection to the service in the proper way by motion in the first instance and its motion being denied, takes an exception, it does not by thereafter demurring to the complaint or answering to the merits, waive its objection, because in such case the appearance is not voluntary.

Such is the effect of the decision in Harkness *vs.* Hyde, 98 U. S., 476.

There the objection to the method of service was made by motion and the Court specially pointed out that it was only where the objection to the service was taken in the first instance that it was not waived.

The case of Southern Pacific Co. *vs.* Denton, 146 U. S., 102, cited in brief of plaintiff in error is not only not inconsistent with this rule, but sustains it. There the question was not as to the validity of service, but it appearing on the face of the complaint that neither plaintiff nor defendant

were residents of the district, and it being a suit between citizens of different States, defendant demurred on the ground that the Circuit Court in that district had no jurisdiction under the Statute of 1888, because it was not the district of the residence of either party. Held, this was a proper way of raising such a question as it appeared on the face of the complaint. *That was not a question of service but of jurisdiction of the Court of that district*, a general appearance would not waive the point manifestly as it could be set up by answer. An answer omitting to set up the objection might, just as omitting to plead the Statute of Limitations. It is conceded, however, an appearance in the case at bar would be conclusive.

The above case is an illustration of the rule applicable to the case at bar. The objection raised by the demurrer herein that the defendant was not an inhabitant of this district, and hence suit could not be maintained therein, and that jurisdiction of the United States Court in suits by non-residents of the State was restricted by Sec. 1780 of the New York Code, were not waived by answer, because they were properly raised by the demurrer, but the question *of valid service of process* was not raised by demurrer, and hence was waived.

It cannot be argued that the plaintiff in error is not suable, and that such point is raised by the demurrer, because the contention of plaintiff in error is not that the Court did not have jurisdiction *to entertain a suit against it*, it concedes that it would if it appeared, and the same result would follow service on an authorized agent, but that it could not be served. It cannot, therefore, be said that the complaint shows that no suit was maintainable. Its contention is that service could not be acquired by compliance with § 432, but that does not necessarily preclude the possibility of maintaining the suit.

III.—But even assuming that the ques-

tion as to valid service by adverse process were properly before the Court, the judgment should be affirmed.

Counsel for plaintiff in error contends substantially that a corporation, although it may do business in a foreign State and sue in its Courts, it cannot be sued outside the State of its incorporation without its consent, either express or implied. It is evident from the authorities cited that the expression cannot *be sued*, as used by counsel, means that it cannot be *served* by process *in invitum* and so brought into Court against its will. It can appear or be served through an agent specifically authorized, or where a statute has prescribed a reasonable method of service of process of the corporation does business in that State it will be presumed to have consented that it may be served in such manner. There can be no question that service or a managing agent, as provided by § 432 of N. Y. Code, is a reasonable provision and calculated to raise the presumption that notice thereof came to the corporation and it is conceded that service in accordance with Sec. 432 of the New York Code was effected, but plaintiff in error contends that Sec. 1780 has impliedly limited the operation of Sec. 432.

(1.) Sec. 432 of the Code provides the method of service on foreign corporations generally, and under the above rule this corporation doing business in this State, must be deemed to have consented to be served as provided by that section of the Code, and this enures to the benefit of the United States Courts as well.

See above rule. *In re* Schollenberger, 96 U. S., 369.

In re Hohorst, 150 U. S.

But the contention of the plaintiff in error is that Section 1780 of the New York Code, which restricts the jurisdiction of State Courts in suits by non-residents against foreign corporations to cases arising within the State of New York, thereby in effect curtailed the scope of Sec. 432 of the Code, as applied to the Courts of the United States.

(1.) The question here presented has been squarely decided in a case exactly similar to the one at bar in Carstairs *vs.* Mechanics' and Traders' Ins. Co., 13 Fed. Rep., 823.

The plaintiff was a citizen and resident of Pennsylvania; the defendant was a corporation organized under the laws of the State of New York, and the suit was brought in the Circuit Court of the State of Maryland. The cause of action did not arise within the State of Maryland. By the statutes of the State of Maryland, jurisdiction of the State Courts was limited in suits by a non-resident against a foreign corporation to cases where the cause of action arose within the State. Service was made on an agent under the Maryland statute prescribing the manner of service on a foreign corporation. *It was held that the service was a valid service, although by force of the Statutes of Maryland the State Courts had no jurisdiction of such an action.*

The Court said that the object of the Legislature in restricting the jurisdiction of the State Courts was to spare the State and its Courts the expense and burden of litigations to which its own citizens were not parties, or which had not arisen within its limits.

This could not affect United States Courts either by curtailing their jurisdiction or limiting the cases in which service under the statute could be made. It is obvious that such considerations can have no bearing upon the jurisdiction of the United States Courts, either as a mat-

ter of law or a matter of policy. The very object of the creation of United States Courts is that a tribunal should be established, open to all citizens of the United States equally, and access should not be denied to a citizen of the United States residing in New Jersey when open to a citizen of the United States residing in New York.

Gordon *vs.* Longest, 16 Peters, 104.

(2.) The contention of counsel for plaintiff in error must be that the provisions of Section 432 are only applicable to cases in which the State Courts have jurisdiction, this would preclude the United States from obtaining valid service *in inritum* on a foreign corporation in all that class of cases in which the State Courts have no jurisdiction, such as admiralty, bankruptcy, patents and other cases in which jurisdiction of the United States Courts is exclusive of that of the State Court, and this is manifestly inconsistent with the decisions of the Supreme Court of the United States.

In re Hohorst, 150 N. Y., page 653, the defendant was an alien corporation, and the action was on a patent.

The service of adverse process in accordance with Section 432 of the Code of New York, was held good.

If the contention of counsel for plaintiff in error is true that a foreign corporation can only be served in the cases in which the State Court has jurisdiction, it is manifest that the service in the Hohorst case could not have been sustained, so that the following statement, in the opinion of Mr. Justice WHEELER on the demurrer, is strictly accurate, viz.:

"If the demurrer could be considered as raising any question of irregularity about the manner of bringing the suit, such that are apparent seem to be disposed of by *in re* Hohorst, 150 U. S., 653."

In cases where the State Courts had no equity jurisdic-

tion, it is still held the United States Courts exercised an equitable jurisdiction.

5 McLean, 285.
United States *vs.* Howland, 4 Wheat., 108.
Livingston *vs.* Story, 9 Pet., 632.
Neves *vs.* Scott, 13 How., 268.
Noonan *vs.* Lee, 2 Black., 499.

But such could not be exercised, except by consent, against a foreign corporation, if the theory of counsel for plaintiff in error is correct.

In cases of admiralty, it has been held that service can be made on foreign corporations in the same method as that provided by the laws of the States.

In re Louisville, 134 U. S. Rep., 488.

(3.) Section 1780 of the Code does not assume to be a qualification of Section 432. Section 1780 does not relate in any manner to how jurisdiction over the person is to be acquired, and is in an entirely different part of the Code. § 432 relates to service generally in all actions. § 1780 is in a chapter devoted to provisions in regard to special actions. It was a restriction as to the class of cases over which the State Courts should have jurisdiction, and was evidently adopted with a view, as was said in Carstairs *vs.* Mechanics' & Traders' Ins. Co., 13 Fed. Rep., 823, of relieving State Courts of the burden and expense of trying certain cases in which its citizens were not parties.

(4.) Prior to the Code the State Courts had jurisdiction over foreign corporations, no matter where the action occurred or whether by a resident or non-resident.

Robinson *vs.* Oceanic Steam Navigation Co., 112 N. Y., 315.

McCormick *vs.* Pennsylvannia Co., 49 N. Y., 303.
Morawetz, Sec. 977.

The provisions then existing in regard to the service on foreign corporations was substantially similar to that set forth in the provisions of Section 432 of the Code.

It is manifest, therefore, that if this action had been brought before the passage of Section 1780 of the Code, there could have been no doubt as to the question of service. The question, therefore, is— Did the passage by the Legislature of the State of New York of Section 1780 of the Code curtail the powers of the United States Courts? The Legislature of New York has no power, either directly or indirectly, to curtail the power of the United States Courts.

Lincoln County *vs.* Lining, 133 U. S., 529.

Bank of British N. A., 44 Fed. Rep., 641.

(5.) The United States Courts could, prior to Section 1780, obtain service by complying with Section 432.

If this was based on any implied assent, such implied assent is none the less strong because thereafter the Legislature of New York, in the exercise of its discretion, has chosen to close its Courts to a certain class of cases against foreign corporations. Such restriction was not intended to and could not affect the United States Courts. Its powers, therefore, remain the same, and a foreign corporation must be presumed to have continued to do business with full knowledge of and assent to this fact.

(6.) The learned counsel for plaintiff in error suggests on page 17 of his brief as to cases such as patents where the United States Courts have exclusive jurisdiction, that such cases could be divided into two classes, viz. :—where the cause of action (an infringement of a patent for instance), arose out of the State and where it arose within the State, as to the former service *in invitum* could not be obtained in suits by non-residents of New York ; as to the second, it does not seem open to such interpretation, but it is scarcely probable that the legislature could have in-

tended any such result and the suggestion illustrates the weakness of the contention that § 1780 was in any way intended to limit § 432 ; both should have their natural interpretation.

§ 1780 was an economic provision to spare to New York taxpayers the expense of the State Courts trying cases for the benefit of residents of other States.

§ 432 provided for a method of service on foreign corporations generally and is equally available in patent and other cases of which New York State Courts have no jurisdiction as in those of which they have. The learned counsel is evidently wrong in his statement on page 19 of his brief, that the State of New York has passed an act forbidding the issue of process against a foreign corporation in favor of a non-resident, where the cause of action did not arise within the State.

The case of

Bank *vs.* Huxter, 124 U. S., 721,

cited by opposing counsel, has no application. There Congress legislating within the scope of its constitutional powers took away from the State Courts jurisdiction in certain cases over National Banks, and it was held the effect was the same as if the State statutes giving the State Courts jurisdiction had expressly excepted national banks. It did not mean that the Act of Congress vacated or repealed the State statutes. If Congress should repeal the act, the powers of the State Courts would be just as before Congress had acted.

It is difficult to see what relevancy that case can have to the question under discussion.

(7.) Counsel for plaintiff in error further contends that even where there is a statute prescribing a matter of service it only relates to suits in regard to the business done in the foreign countries, although the statute prescribing the method of service makes no such limitation.

In some of the cases cited the expression in regard to business done in the State is used, but we think these were used in connection with special local statutes providing as a condition of doing insurance business that they could be served within the State on suits, policies issued or contracts made there. There is no reason or authority for holding that a statute providing broadly for service in all cases should be so limited. In many of the cases cited by counsel for plaintiff in error, in which the service is sustained, it would seem that the suits did not relate to business done in the State. And the New York Courts have held that § 432 of the Code relates not only to cases arising out of business not done in the State, but includes corporations not even engaged in doing business there.

Pope *vs.* Terre Haute Car. & Co., 87 N. Y., 137.

Under the large increase in corporate activity in all directions with their many officers and agents in different States there would seem to be no principle of natural justice or rule of convenience, requiring a restriction of their liability to respond in the Courts of any State where they do business

In Mohr, &c. *vs.* Insurance Co., 12 Fed. Rep., 474. opinion by Mr. Stanley Mathews, it was held that an action upon a policy of insurance is transitory, not local, and may, therefore, be brought whereever the company issuing the policy can be found without regard to where the contract was made or the subject thereof located. The Court says the Insurance law (*i. e.*, allowing foreign companies to do business) requires that they (*i. e.*, insurance companies) should expressly assent to its terms and consent to be sued through certain agencies before they are allowed to do business in the State. The defense is that that consent only goes to the extent of the terms of that statute, and is reasonably construed to cover only the

transactions arising under it. But even if that were so I should still think that under the OTHER general provisions of the statute making provision for service of process upon managing agents of foreign companies, their coming into the State by means of such agents for the purpose of transacting business was necessarily an assent to being sued in that way. * * * I think this is the necessary result of the authorities. * * * The only distinction then between the two cases is that here the causes of action were not created by the action of the agents of the corporation in this State. But by virtue of the general provisions of the statute relating to service on foreign companies even on the supposition that I am not authorized to construe the insurance law itself as requiring them to assent to be sued with reference to *all* causes of action—and I do not think it can be limited—I have thought this service was rightly had."

But this suit at bar is connected with business done in New York. Plaintiff in error is a common carrier of passengers to and from New York. Defendant in error was when injured a passenger on a ticket entitling him to a passage to and landing in New York. The injury was received while the corporation was performing—or assuming to perform its contract—part of which at least was to be performed in New York and which was part of the business it was there doing. It does not appear in the facts certified where defendant in error purchased his ticket. If in New York there would scarcely seem to be a doubt that the suit grew out of business in New York where the obligation originated, and it would seem to be highly artificial to make a distinction in the right to obtain service in New York between passengers to that point, purchasing their tickets there or elsewhere.

But independent of the existence of a State statute, jurisdiction of the person of a foreign corporation can be obtained by service on a proper agent.

All that is required to constitute service in common justice is that the defendant should be reasonably notified of the proceedings and opportunity given to defend. The plaintiff in error doing business here, and having the privilege of suing in our Courts, there is no reason in justice why it should not be sued here by United States citizens, and the Courts should not adopt a rule which would entail this result unless positively established by the authorities. While there are some cases which express the opinion that the existence of a State statute is a *sine qua non* of obtaining service *in invitum* on a foreign corporation, they do not necessarily decide the point, and the expressions are at most dicta, and not involved necessarily in the decisions.

They all hold that when a State has by statute prescribed a method of service that then a compliance with that method is sufficient, but it does not follow that such a statute is an absolute prerequsite, and that service could not be obtained in the absence of such statute. On the other hand, there are many cases which have sustained service in the absence of a State statute (see *post*).

The original rule confining the recognition of corporations strictly within the territorial limits of the country creating them has been so much extended by modern authorities that it may be considered to a large extent abrogated.

It is universally conceded that, although a corporation cannot technically migrate from the country where it is corporated, it may do business in other countries and may bring suits in the Courts of such countries, and its author-

ized agents may appear for it and be served with process in the Courts of such foreign countries. There is no reason against, but every reason in favor of, the rule that, if recognized for the purposes of maintaining suit and doing business, they should be recognized for the purpose of being sued and that, where service is made on the general officers, jurisdiction of the corporation *in personam* is obtained, providing the person served is actually engaged in the business of the corporation as an officer or agent within such foreign jurisdiction.

The case of service of an officer who happens casually, for his own private purposos, to be within a foreign jurisdiction, is an entirely different question. In the absence of any provision of statute making him so servable, there would seem to be many reasons for holding that service on such an officer should not be deemed a service on the corporation, as he is not within the foreign jurisdiction *qua* officer, but only personally; but where the officer or agent is actually engaged in carrying on the business of the corporation and acting for it, there would seem, either as a question of policy or natural justice, to be every reason in favor of and no reason against holding that service upon him is good even in the absence of a statute.

Where a corporation comes into a foreign jurisdiction, and through its general agents carries on business by permission of statute or general comity, an intent or consent that service on such agent shall bind the corporation can be implied just as well in the absence of a statute to that effect, and we submit that such is the law (see *post*).

The object of the statutes which have been passed has not been so much to enable a corporation to be sued by service on its officers or general agents, as to make it a condition of its doing business that it shall consent to be served through some *sub-agent or inferior* officer, who would not by his connection with the corporation be ordi-

narily deemed a proper person to be served, or that the company should designate some outside person not necessarily connected in any way with the corporation upon whom service could be made. In some cases it has prescribed that service may be made upon the corporation by serving the State auditor or other State officer.

The true rule would seem to be that wherever a company is carrying on its business through *general agents or officers in charge*, service on such agents or officers will be good without any special State statute, but where the State statute provides either expressly or by implication as a condition of doing business that the corporation may be served by service *on an inferior agent*, such service would be sufficient by reason of the statute.

The above is sustained by the authorities.

In St. Clair *es.* Cox, 106 U. S. Rep., 352, cited in brief of counsel for plaintiff in error, the question was as to the validity of the service made in accordance with the State statute; and the Court held that the service was good; but it does not follow that that was the only method of service, or that service on a general agent would not have been sufficient.

On the contrary, the Court says speaking of corporations:

"Its officers and agents constitute all that there is visible of its existence, *and they may be authorized to act for it without as well as within the State.* There would seem, therefore, to be no sound reason why, to the extent of their agency, *they should not be equally deemed to represent it in the States for which they are respectively appointed when it is called to legal responsibility for their transactions.*"

MORAWETZ on Corporations, Section 979:

"It is obviously impracticable to make service of a writ upon a corporation aggregate directly. *For this reason it is one of the implied conditions in the creation*

of every corporation aggregate, that its managing agents shall be invested with authority to receive service of process directed against the corporation."

See cases cited.

In Hayden *vs.* Androscoggin Mills, 1 Fed. Rep., the State statute specifying the manner of service on a foreign corporation was not complied with. Judge LOWELL held this immaterial. He says in his opinion, page 96:

"I think a trading corporation may be said to be personally present for the purpose of an action wherever it it has an established place of trade. This was so decided in England on principle, and as a new question as late as the year 1872 (Newby *vs.* Van Oppen, Law Reports, Queen's Bench, 293). * * * *In the United States most of the cases turn upon the words of the statute, but the reasoning is often more general, and is, I think, in substantial accordance with the law of England, namely: That a trading company is of right sueable in any country in which it conducts an important part of its business.*"

In Railroad Co. *vs.* Harris, 12 Wallace, 65, at the time of service there was no local statute, and the Supreme Court specifically stated, page 83, that service on the agent of a foreign company was good, independent of any statute as to service, and the Supreme Court later "*in re* Schollenberger," 96 U. S., hereinafter mentioned specifically referred to the point in this case that there was no local statute.

In Wilson Packing Co. *vs.* Hunter, 8 Bissell, 429, it was held that a forign company doing business in Illinois was liable to suit in the Federal Court there, although there was no statute in regard to service. Judge Drummond puts it on the ground that where a foreign corporation comes into a State and does business in a State, it is subject to the liability of being sued therein, irrespective of the existence of a State statute regulating service; and

he holds that it is so both on principle and authority, and says, on page 432, that he considers the question has been decided in the Supreme Court by the case of the Railroad Co. *vs.* Harris, 12 Wallace, above cited, where at the time of service there was no statute regulating the manner of service, and yet the Court assumed jurisdiction over the company.

To the same point see

Moch *vs.* Virginia Fire Ins. Co., 10 Fed. Rep., 690 (see page 700).

Moulin *vs.* Ins. Co., 1 Dutch, 57.

In Maxwell *vs.* Atcheson, &c. R. R. Co., 34 Fed. R., 286, cited by opposing counsel, the State statute specifically provided that service could be made on foreign corporation *only* where cause of action arose within the State, and in this respect differed essentially from § 432 of Code.

See § 8145, General Statutes of Michigan.

The Court then considers the question independent of the statute, and says:

"The general rule appears to be well settled that a "foreign corporation may be sued within any jurisdic- "tion wherein it carries on an important part of its busi- "ness."

"Where under the laws of the State it is re- "quired, as a condition of doing business within "the State, that it shall appoint an officer or "agent upon whom process may be served, such "corporation is always treated as 'found' within "the State, within the meaning of the judiciary, "and suits in the Federal Courts may be instituted by "service upon him. On the other hand, when an officer of "a foreign corporation is temporarily visiting or travel-

"ling within the State, it is equally well settled that ser-
"vice of process against the corporation cannot be made
"upon him *if the corporation is not actually doing busi-*
"*ness within the State, what is the character* or amount of
"business which the corporation must do to subject its
"agent to the service of process within the foreign State,
"is left in some doubt by the authorities. If it have an
"office for the general transaction of its business—the sale
"of its goods if it be a manufacturing company, or the
"making of contracts and the receipt of freight and pas-
"sengers for transportation if it be a railroad—it would
"appear to be sufficient."

If this Court cannot bring the plaintiff in error into Court by adverse process, it follows that while the plaintiff in error could sue defendant in error in the Courts of the United States, all remedies for the defendant in error, who is a citizen of the United States by suit at law for an injury done him while on a ship coming to this country, is barred, unless he seeks such relief as he may get by suing in a foreign country. A construction which leads to such a denial of justice to a United States citizen should not be adopted unless absolutely necessary. In view of the large number of United States citizens non-residents of New York landed here every year by foreign corporations, this question is one of great importance. Although the State of New York may for economical purposes refuse to extend the use of its Courts to citizens of other States, that is, if any, so much the greater reason why access should be open to them to the United States Courts.

The question certified should be answered in the affirmative.

F. K. PENDLETON,
Of Counsel for Defendant in Error.

PARRISH & PENDLETON,
Attorneys.

BARROW STEAMSHIP COMPANY *v.* KANE.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 353. Argued October 22, 1897. — Decided April 11, 1898.

The Circuit Court of the United States, held within one State, has jurisdiction of an action brought, by a citizen and resident of another State, against a foreign corporation doing business in the first State through its regularly appointed agents, upon whom the summons is there served, for a cause of action arising in a foreign country; although the statutes of the State confer no authority upon any court to issue process against a foreign corporation, at the suit of a person not residing within the State, and for a cause of action not arising therein.

THIS was an action brought November 1, 1894, in the Circuit Court of the United States for the Southern District of New York, by Michael Kane against the Barrow Steamship Company (Limited).

Statement of the Case.

The complaint alleged that the plaintiff was a citizen of New Jersey, and resided at Newark in that State; and that "the defendant is a corporation organized and incorporated under the laws of the Kingdom of Great Britain, and is the owner of a certain steamship known as the Devonia, and is and was at the time hereinafter mentioned a common carrier of passengers, and engaged in the business of transportation of freight and passengers upon said steamship Devonia and other steamers, among other places, from Londonderry, Ireland, to the city of New York, and has offices and property in the said city of New York, and its general agents therein, managing the affairs of the said company within said city, and is a resident and inhabitant of the city of New York and the Southern District of New York, within the meaning of the statute in such case made and provided;" that "the said defendant operates its business, or part thereof, in and under the name and as part of the Anchor Line, and its said business is in whole or in part done under that name, and its steamers, including the said Devonia, belong to what is known as the Anchor Line steamships; that the general managers of said business in the city of New York are the firm of Henderson Brothers, who are the general agents of said defendant, and the officers of said defendant company and said agents are at No. 7 Bowling Green and pier 54 North River in said city; that on or about September 13, 1893, the plaintiff purchased and paid for a ticket as a passenger for transportation by defendant from Londonderry, in Ireland, Kingdom of Great Britain, to the city of New York, on the steamship Devonia, belonging to said defendant; and the said defendant received the said plaintiff as a passenger, and undertook and promised to transport the said plaintiff from said Londonderry to New York with due care, and to do all those things necessary and required for the safe transportation of the said plaintiff to and from said points; and it became and was its duty and it became bound to protect and save harmless the said plaintiff from any injury or harm from its agents or servants employed in its business;" and that "for the purpose of transporting passengers over part of the voyage, viz., from Londonderry to

the steamship Devonia, lying in the harbor, the said defendant used a certain tender; that said plaintiff, being a passenger on said tender, in pursuance of the obligation and promise aforesaid, the same being part of the transportation to New York, was violently, on or about September 14, 1893, assaulted and maltreated, without just cause or excuse and wrongfully and unlawfully, by servants or agents of said defendant on said tender," as particularly stated in the complaint; and thereby suffered damages to the extent of $20,000.

To this complaint the defendant filed the following appearance and demurrer: "The defendant above named, appearing specially by Henry T. Wing and Harrington Putnam as its attorneys, specially, only for the purposes hereof, as stated in its special appearance noted herein, demurs to the complaint herein, for the special purpose, and no other, until the questions herein raised have been decided, of objecting to the jurisdiction of this court, demurring and excepting to the complaint, because it appears upon the face thereof that the court has not jurisdiction of the person of the defendant, nor of the subject-matter of the action, for the reason that neither the defendant nor the plaintiff is an inhabitant or resident of the Southern District of New York, and the action therefore cannot be maintained therein, and that the defendant is a foreign corporation, and the cause of action did not arise within the State of New York. Wherefore defendant prays judgment whether this court has jurisdiction, and asks that the complaint be dismissed, with costs; but should the court overrule this demurrer and exception, the defendant then asks time and leave to answer to the merits, though excepting to the action of the court in overruling said demurrer."

The court overruled the demurrer, with liberty to answer the complaint. The defendant thereupon answered, and the case went to trial.

When the plaintiff's counsel had opened the case to the jury, the defendant's counsel moved to dismiss the suit, upon the ground "that it appeared upon the face of the complaint that the court had not jurisdiction thereof; that it had no

jurisdiction of the person of the defendant; and that it had no jurisdiction of the subject-matter of the action;" and presented as grounds of the motion the same reasons that had been urged at the hearing on the demurrer. The court denied the motion, and the defendant duly excepted to the denial.

At the close of the testimony, the defendant again moved the court to dismiss the proceedings on the ground of want of jurisdiction, both of the subject-matter and of the person of the defendant. The motion was denied and an exception reserved.

The trial resulted in a verdict for the plaintiff for $7500, upon which judgment was rendered.

The defendant took the case by writ of error to the Circuit Court of Appeals, which requested the instruction of this court upon a question of law; and embodied in its certificate the provisions of the New York Code of Civil Procedure which are copied in the margin,[1] the foregoing pleadings and proceedings in the case, and this statement of facts:

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[1] SEC. 432. (Amended 1877, c. 416.) *How personal service of summons made upon a foreign corporation.* Personal service of a summons upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the State, as follows:

1. To the president, treasurer or secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation, and the signature of its president, vice president, or other acting head, accompanied with the written consent of the person designated, and filed in the office of the secretary of state. The designation must specify a place, within the State, as the office or residence of the person designated; and, if it is within a city, the street, and the street number, if any, or other suitable designation of the particular locality. It remains in force, until the filing in the same office of a written revocation thereof, or of the consent executed in like manner; but the person designated may, from time to time, change the place specified as his office or residence, to some other place within the State, by a writing, executed by him, and filed in like manner. The secretary of state may require the execution of any instrument, specified in this section, to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a

"The cause of action is for damages alleged to have been sustained in consequence of an assault upon the plaintiff, a passenger by the defendant's steamship, while the plaintiff was in transit under a contract of transportation, by a person for whose acts it is alleged the defendant was responsible. The alleged assault took place in the port of Londonderry, Ireland. The plaintiff is a citizen and resident of the State of New Jersey. The defendant is a corporation organized and incorporated under the laws of the United Kingdom of Great Britain and Ireland. It is a common carrier operating a line of steamships from ports in that kingdom to the port of New York. It does business in the State of New York through the firm of Henderson Brothers, its regularly appointed agents, and has property therein. There is no proof of any written designation by the defendant of any one within the State of New York upon whom service of process may be made. Service of the summons was made on a member of the firm of Henderson Brothers as agents for the defendant."

The question of law certified was: "Had the Circuit Court

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certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the State, or the cause of action arose therein: to the cashier, a director, or a managing agent of the corporation, within the State.

SEC. 1780. *When foreign corporations may be sued.* An action against a foreign corporation may be maintained by a resident of the State, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract made within the State, or relating to property situated within the State at the time of the making thereof.

2. Where it is brought to recover real property situated within the State, or a chattel, which is replevied within the State.

3. Where the cause of action arose within the State, except where the object of the action is to affect the title to real property situated without the State.

jurisdiction to try the action and render judgment therein against the defendant?"

Mr. Esek Cowen for plaintiff in error.

Mr. F. K. Pendleton for defendant in error.

Mr. Justice Gray, after stating the case, delivered the opinion of the court.

This action was brought in the Circuit Court of the United States for the Southern District of New York against the Barrow Steamship Company, by a passenger on one of its steamships on a voyage from Londonderry in Ireland to the city of New York, for an assault upon him by its agents in the port of Londonderry. The certificate of the Circuit Court of Appeals shows that the plaintiff is a citizen and resident of the State of New Jersey; that the defendant is a corporation, organized and incorporated under the laws of the United Kingdom of Great Britain and Ireland, and a common carrier running a line of steamships from ports in that kingdom to the port of New York, and does business in the State of New York, through a mercantile firm, its regularly appointed agents, and upon whom the summons in this action was served.

It was contended, in behalf of the steamship company, that, being a foreign corporation, no suit could be maintained against it *in personam* in this country without its consent, express or implied; that by doing business in the State of New York it consented to be sued only as authorized by the statutes of the State; that the jurisdiction of the courts of the United States held within the State depended on the authority given by those statutes; that the statutes of New York conferred no authority upon any court to issue process against a foreign corporation in an action by a non-resident, and for a cause not arising within the State; and therefore that the Circuit Court acquired no jurisdiction of this action brought against a British corporation by a citizen and resident of New Jersey.

The constant tendency of judicial decisions in modern times has been in the direction of putting corporations upon the same footing as natural persons in regard to the jurisdiction of suits by or against them.

By the Constitution of the United States, the judicial power, so far as depending upon citizenship of parties, was declared to extend to controversies "between citizens of different States," and to those between "citizens" of a State and foreign "citizens or subjects." And Congress, by the Judiciary Act of 1789, in defining the original jurisdiction of the Circuit Courts of the United States, described each party to such a controversy, either as "a citizen" of a State, or as "an alien." Act of September 24, 1789, c. 20, § 11; 1 Stat. 78; Rev. Stat. § 629. Yet the words "citizens" and "aliens," in these provisions of the Constitution and of the Judiciary Act, have always been held by this court to include corporations.

The jurisdiction of the Circuit Courts over suits between a citizen of one State and a corporation of another State was at first maintained upon the theory that the persons composing the corporation were suing or being sued in its name, and upon the presumption of fact that all those persons were citizens of the State by which the corporation had been created; but that this presumption might be rebutted, by plea and proof, and the jurisdiction thereby defeated. *Bank of United States* v. *Deveaux*, 5 Cranch, 61, 87, 88; *Hope Ins. Co.* v. *Boardman*, 5 Cranch, 57; *Commercial Bank* v. *Slocomb*, 14 Pet. 60.

But the earlier cases were afterwards overruled; and it has become the settled law of this court that, for the purposes of suing and being sued in the courts of the United States, a corporation created by and doing business in a State is, although an artificial person, to be considered as a citizen of the State, as much as a natural person; and there is a conclusive presumption of law that the persons composing the corporation are citizens of the same State with the corporation. *Louisville &c. Railroad* v. *Letson*, 2 How. 497, 558; *Marshall* v. *Baltimore & Ohio Railroad*, 16 How. 314, 329; *Muller* v. *Dows*, 94 U. S. 444; *Steamship Co.* v. *Tugman*, 106 U. S. 118;

St. Louis & San Francisco Railway v. *James*, 161 U. S. 545, 555–559.

In *Bank of Augusta* v. *Earle*, 13 Pet. 519, decided before the case of *United States* v. *Deveaux*, above cited, had been overruled, and while that case was still recognized as authority for the principle that in a question of jurisdiction the court might look to the character of the persons composing a corporation, Chief Justice Taney, in delivering judgment, said that the principle had "never been supposed to extend to contracts made by a corporation, especially in another sovereignty;" but that "whenever a corporation makes a contract, it is the contract of the legal entity; of the artificial being created by the charter; and not the contract of the individual members." 13 Pet. 586, 587.

In *Bank of Augusta* v. *Earle*, it was adjudged that a corporation created by one State, and acting within the scope of its charter, might do business and make contracts in another State when permitted to do so by the laws thereof, and might sue upon such contracts in the courts of that State. As was said in the opinion: "It is sufficient that its existence as an artificial person, in the State of its creation, is acknowledged and recognized by the law of the nation where the dealing takes place; and that it is permitted by the laws of that place to exercise there the powers with which it is endowed." 13 Pet. 589. And it was declared to be well settled that by the law of comity among nations, prevailing among the several States of the Union, "a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts," except as to contracts repugnant to its own policy. 13 Pet. 592.

The manifest injustice which would ensue, if a foreign corporation, permitted by a State to do business therein, and to bring suits in its courts, could not be sued in those courts, and thus, while allowed the benefits, be exempt from the burdens, of the laws of the State, has induced many States to provide by statute that a foreign corporation making contracts within the State shall appoint an agent residing therein, upon whom process may be served in actions upon such contracts. This

court has often held that wherever such a statute exists service upon an agent so appointed is sufficient to support jurisdiction of an action against the foreign corporation, either in the courts of the State, or, when consistent with the acts of Congress, in the courts of the United States held within the State; but it has never held the existence of such a statute to be essential to the jurisdiction of the Circuit Courts of the United States. *Lafayette Ins. Co.* v. *French*, 18 How. 404; *Ex parte Schollenberger*, 96 U. S. 369; *New England Ins. Co.* v. *Woodworth*, 111 U. S. 138, 146; *Shaw* v. *Quincy Mining Co.*, 145 U. S. 444, 452.

In *Lafayette Ins. Co.* v. *French*, the court said: "We limit our decision to the case of a corporation acting in a State foreign to its creation, under a law of that State which recognized its existence, for the purposes of making contracts there and being sued on them, through notice to its contracting agents." But it was cautiously added: "The case of natural persons, or of other foreign corporations, is attended with other considerations, which might or might not distinguish it; upon this we give no opinion." 18 How. 408, 409.

The liability of a foreign corporation to be sued in a particular jurisdiction need not be distinctly expressed in the statutes of that jurisdiction, but may be implied from a grant of authority in those statutes to carry on its business there.

Accordingly, in *Railroad Co.* v. *Harris*, 12 Wall. 65, the Baltimore and Ohio Railroad Company, a corporation chartered by the State of Maryland, and authorized by the statutes of the State of Virginia to extend its railroad into that State, and also by the act of Congress of March 2, 1831, c. 85, 4 Stat. 476, to extend, construct and use a lateral branch of its railroad into and within the District of Columbia, and to exercise the same powers, rights and privileges, and be subject to the same restrictions in regard thereto, as provided in its charter, was held, by reason of the act of Congress, and of service upon its president in the District of Columbia, to be liable to an action in the District by a passenger for an injury happening in the State of Virginia; although the railroad company was a corporation of the State of Maryland only,

and neither the act of Congress authorizing it to construct and use a branch railroad in the District of Columbia, nor any other act of Congress, had made any provision for bringing suits against foreign corporations, the action having been brought before the passage of the act of February 22, 1867, c. 64, § 11; 14 Stat. 404; Rev. Stat. D. C. § 790. Mr. Justice Swayne, in delivering judgment, said: "If the theory maintained by the counsel for the plaintiff in error be correct, however large or small the cause of action, and whether it were a proper one for legal or equitable cognizance, there could be no legal redress short of the seat of the company in another State. In many instances the cost of the remedy would have largely exceeded the value of its fruits. In suits local in their character, both at law and in equity, there could be no relief. The result would be, to a large extent, immunity from all legal responsibility. It is not to be supposed that Congress intended that the important powers and privileges granted should be followed by such results. But turning our attention from this view of the subject, and looking at the statute alone, and reading it by its own light, we entertain no doubt that it made the company liable to suit, where this suit was brought, in all respects as if it had been an independent corporation of the same locality." 12 Wall. 83, 84.

In that case, it is to be observed, the cause of action arose, neither in the State of Maryland, where the defendant was incorporated, nor in the District of Columbia, where the action was brought, but in the State of Virginia. The decision, in principle and in effect, recognizes that a corporation of one State, lawfully doing business in another State, and summoned in an action in the latter State by service upon its principal officer therein, is subject to the jurisdiction of the court in which the action is brought.

In England, the right of a foreign corporation doing business in England to sue in the English courts was long ago recognized; and its liability to be subjected to suit in those courts, by service made upon one of its principal officers residing and representing it within the realm, has been fully established by recent decisions. *Newby* v. *Von Oppen*, L. R.

7 Q. B. 293; *Haggin* v. *Comptoir d'Escompte de Paris*, 23 Q. B. D. 519.

In the courts of several States of the Union, the like view has prevailed. *Libbey* v. *Hodgdon*, 9 N. H. 394; *March* v. *Eastern Railroad Co.*, 40 N. H. 548, 579; *Day* v. *Essex County Bank*, 13 Vermont, 97; *Moulin* v. *Trenton Ins. Co.*, 1 Dutcher (25 N. J. Law), 57; *Bushel* v. *Commonwealth Ins. Co.*, 15 S. & R. 173; *North Missouri Railroad* v. *Akers*, 4 Kansas, 453, 469; *Council Bluffs Co.* v. *Omaha Co.*, 49 Nebraska, 537. The courts of New York and Massachusetts, indeed, have declined to take jurisdiction of suits against foreign corporations, except so far as it has been expressly conferred by statutes of the State. *McQueen* v. *Middletown Manuf. Co.*, 16 Johns. 5; *Robinson* v. *Oceanic Steam Navigation Co.*, 112 N. Y. 315; *Desper* v. *Continental Water Meter Co.*, 137 Mass. 252. But the jurisdiction of the Circuit Courts of the United States is not created by, and does not depend upon, the statutes of the several States.

In the Circuit Courts of the United States, there have been conflicting opinions, but the most satisfactory ones are those of Judge Drummond and Judge Lowell in favor of the liability of foreign corporations to be sued. *Wilson Packing Co.* v. *Hunter*, 8 Bissell, 429; *Hayden* v. *Androscoggin Mills*, 1 Fed. Rep. 93.

In *Lafayette Ins. Co.* v. *French*, above cited, this court, speaking by Mr. Justice Curtis, after saying that a corporation created by one State could transact business in another State, only with the consent, express or implied, of the latter State, and that this consent might be accompanied by such conditions as the latter State might think fit to impose, defined the limits of its power in this respect by adding, "and these conditions must be deemed valid and effectual by other States, and by this court, provided they are not repugnant to the Constitution or laws of the United States, or inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others, or that principle of natural justice which forbids condemnation without opportunity for defence." 18 How. 407.

The object of the provisions of the Constitution and statutes of the United States, in conferring upon the Circuit Courts of the United States jurisdiction of controversies between citizens of different States of the Union, or between citizens of one of the States and aliens, was to secure a tribunal presumed to be more impartial than a court of the State in which one of the litigants resides.

The jurisdiction so conferred upon the national courts cannot be abridged or impaired by any statute of a State. *Hyde* v. *Stone*, 20 How. 170, 175; *Smyth* v. *Ames*, 169 U. S. 466, 516. It has therefore been decided that a statute, which requires all actions against a county to be brought in the county court, does not prevent the Circuit Court of the United States from taking jurisdiction of such an action; Chief Justice Chase saying that "no statute limitation of suability can defeat a jurisdiction given by the Constitution." *Cowles* v. *Mercer County*, 7 Wall. 118, 122; *Lincoln County* v. *Luning*, 133 U. S. 529; *Chicot County* v. *Sherwood*, 148 U. S. 529. So statutes requiring foreign corporations, as a condition of being permitted to do business within the State, to stipulate not to remove into the courts of the United States suits brought against them in the courts of the State, have been adjudged to be unconstitutional and void. *Home Ins. Co.* v. *Morse*, 20 Wall. 445; *Barron* v. *Burnside*, 121 U. S. 186; *Southern Pacific Co.* v. *Denton*, 146 U. S. 202.

On the other hand, upon the fundamental principle that no one shall be condemned unheard, it is well settled that in a suit against a corporation of one State, brought in a court of the United States held within another State, in which the corporation neither does business, nor has authorized any person to represent it, service upon one of its officers or employés found within the State will not support the jurisdiction, notwithstanding that such service is recognized as sufficient by the statutes or the judicial decisions of the State. *St. Clair* v. *Cox*, 106 U. S. 350; *Fitzgerald Co.* v. *Fitzgerald*, 137 U. S. 98, 106; *Goldey* v. *Morning News*, 156 U. S. 518. See also *Mexican Central Railway* v. *Pinkney*, 149 U. S. 194.

By the existing act of Congress defining the general juris-

diction of the Circuit Courts of the United States, those courts "shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, when the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars," "in which there shall be a controversy between citizens of different States," "or a controversy between citizens of a State and foreign States, citizens or subjects;" and, as has been adjudged by this court, the subsequent provisions of the act, as to the district in which suits must be brought, have no application to a suit against an alien or a foreign corporation; but such a person or corporation may be sued by a citizen of a State of the Union in any district in which valid service can be made upon the defendant. Act of March 3, 1887, c. 373, § 1, as corrected by the act of August 13, 1888, c. 866, § 1; 24 Stat. 552; 25 Stat. 434; *Shaw* v. *Quincy Mining Co.*, 145 U. S. 444, 453; *In re Hohorst*, 150 U. S. 653; *Galveston &c. Railway* v. *Gonzales*, 151 U. S. 496, 503; *In re Keasbey & Mattison Co.*, 160 U. S. 221, 229, 230.

The present action was brought by a citizen and resident of the State of New Jersey, in a Circuit Court of the United States held within the State of New York, against a foreign corporation doing business in the latter State. It was for a personal tort committed abroad, such as would have been actionable if committed in the State of New York or elsewhere in this country, and an action for which might be maintained in any Circuit Court of the United States which acquired jurisdiction of the defendant. *Railroad Co.* v. *Harris*, above cited; *Dennick* v. *Railroad Co.*, 103 U. S. 11; *Huntington* v. *Attrill*, 146 U. S. 657, 670, 675; *Stewart* v. *Baltimore & Ohio Railroad*, 168 U. S. 445. The summons was duly served upon the regularly appointed agents of the corporation in New York. *In re Hohorst*, above cited. The action was within the general jurisdiction conferred by Congress upon the Circuit Courts of the United States. The fact that the legislature of the State of New York has not seen fit to authorize like suits to be brought in its own courts by citizens and residents of other States cannot deprive such citizens

of their right to invoke the jurisdiction of the national courts under the Constitution and laws of the United States.

The necessary conclusion is that the Circuit Court had jurisdiction to try the action and to render judgment therein against the defendant, and that the

Question certified must be answered in the affirmative.